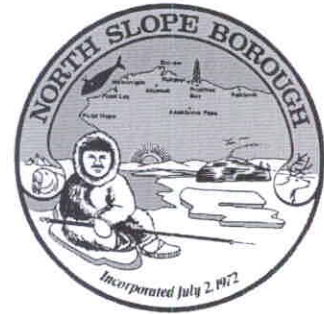


North Slope Borough

OFFICE OF THE MAYOR

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George N. Ahmaogak, Sr., Mayor

August 5, 2005

Mr. John R. King, Responsible Program Officer
Coastal Programs Division
Office of Ocean and Coastal Resource Management
National Ocean Service
SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Sent Via E-Mail: John.King@noaa.gov

Re: Environmental Impact Statement (EIS) for the Proposed Approval of
Amendments to the Alaska Coastal Management Program (ACMP)

Dear Mr. King:

Thank you for this opportunity to provide written scoping comments on your Office of Ocean and Coastal Resource Management's (OCRM's) intent to prepare an environmental impact statement (EIS) for the proposed approval of amendments to the Alaska Coastal Management Program (ACMP). These comments will be in addition to testimony that I and members of my North Slope Borough staff provided at both Barrow and Anchorage scoping meetings.

I must first state what I am sure you realize all too well; that the timeline OCRM has established for completion of this EIS process is unreasonably brief. That you expect to publish a Draft EIS for public review only three weeks after the conclusion of scoping begs the question whether you can give appropriate consideration to the comments that

the Borough and others are now submitting. It is our position that you must produce a legally defensible product that complies with the letter and the spirit of the National Environmental Policy Act (NEPA) and its enabling regulations regardless of whether the task can be completed within the clearly insufficient time dictated by the misguided statements and actions of our present state administration and Legislature.

This EIS process is all about impacts. First, whether additional impacts to the physical, biological, or human environments will occur as a result of the State's proposed amendment of the ACMP, and Second, what and how significant those impacts will be.

The answer to the first question is **Yes** – of course there will be additional environmental impacts resulting from the amendment of the ACMP. That essentially is the result **intended** by the administration when it began this process. It was intended that the changes to the program would allow for more development within and adjacent to the state's coastal zone, and that the development would occur faster, with fewer regulatory hurdles to overcome, and with a drastically reduced ability of local communities to reject or shape it.

There is no such thing as impact-free development. The state wants more development in the coastal zone, and has amended the ACMP to allow that to happen. There will be more impacts to the resources and competing uses of the coastal zone because of the amendment.

Will these additional impacts be significant and harmful? Yes, they will be. They will certainly be above and beyond the level that local districts and the communities we represent want and think is appropriate. I know that because despite the rhetoric and unsupported claims of a program out of control, the old ACMP was working. In most if not all coastal areas, including the North Slope, the old ACMP was a critical tool in approaching an appropriate, if delicate, balance between industrial development and competing uses and values. That is not to say that irreversible industrial impacts have not already occurred in some regions. This EIS must incorporate the findings of the 2003 National Research Commission report on the cumulative effects of oil and gas activities on the North Slope. Among other findings, the researchers found that piecemeal development and permitting had resulted in significant social and cultural impacts to our largely Inupiat population, and comprehensive planning and regulatory structures should be strengthened to prevent further effects. The wholesale changes embodied in the proposed ACMP amendment, however, take the program in the opposite direction. They will, and I stress once again, **are intended to** upset whatever semblance of balance we now have to achieve a permitting system that will favor development.

The North Slope Borough has been a very active participant in coastal management since the 1970s. Our own local district program was finally approved and adopted as part of the ACMP in 1988. For a quarter century, the ACMP has provided the North Slope Borough an important tool to manage coastal uses and resources, especially offshore resources. The people of the North Slope have depended on coastal resources

to sustain our traditional Inupiat Eskimo culture for thousands of years. The subsistence harvest of fish, waterfowl, caribou, bowhead whales, and other marine and terrestrial mammals sustains our bodies and our spirits. Subsistence activities define who we are. The proposed constriction of our ability to manage these resources is both an insult and an injustice. I am deeply concerned about the extent of the proposed changes and the process that was used to develop the revised regulations. Despite repeated assertions by the state to the contrary, the lack of opportunities for Alaska's coastal communities to be meaningfully involved in the drafting of the regulations was truly disgraceful. The comprehensive overhaul of the ACMP reduces significant protections embodied in the former program. The regulations would exceed what was discussed by the administration during legislative hearings as well as what was approved by the Legislature in HB 191. The regulations would change coastal zone boundary criteria, weaken the statewide standards, narrow the geographic coverage of the ACMP, and greatly limit the ability of coastal districts to develop enforceable policies. It can be expected to have significant adverse impacts to subsistence, fish and wildlife, their habitats, and other coastal resources and uses, and by extension therefore, to our centuries-old Inupiat culture and current social systems.

A number of new provisions in the ACMP would reduce the ability of the North Slope Borough and other coastal districts in Alaska to manage our coastal resources and uses. Alaska's original coastal program established a strong local voice in coastal management, but the proposed changes would diminish this role by eliminating provisions for local control.

Perhaps the change with the most important consequences is the establishment of new restrictions on coastal district enforceable policies. The Alaska Department of Natural Resources (DNR) has gone to great lengths through the crafting of multi-layered regulations and ever-changing interpretations of those regulations that often strain common English usage and common sense to remove the ability of coastal districts to establish meaningful policies. The State's June 2, 2005 submittal to OCRM describes a complex set of restrictions on the drafting of policies that is extraordinarily difficult to decipher. These restrictions are couched in vague terminology using terms such as 'flow from', 'adequately address', 'avoid, minimize or minimize', 'carve outs', and 'stringent versus specific'. Though these concepts are not described in plain language, the message is clear to coastal districts that they may no longer establish meaningful enforceable policies addressing the very issues that spurred most of us to be involved in the program to begin with.

The implications of these new restrictions on enforceable policies cannot be fully understood just by reading DNR's June 2 document. To provide for the reviewing public the best indication of the State's intent regarding the role and functions of local districts under the amended ACMP, the EIS must include an analysis of the State's responses to the draft revised plans of the North Slope Borough and the other coastal districts. These responses leave little doubt that under the new ACMP, there is no room for effective district policies. Without district policies, coastal resources and uses will receive new pressures and adverse impacts that should be comprehensively addressed in the EIS.

The sweeping changes will seriously affect the state's ability to meet the objectives of the ACMP outlined in AS 46.40.020 and national policy objectives identified in Section 303 of the federal Coastal Zone Management Act. In addition, the weakened role of the coastal districts conflicts with the explicitly stated purpose of Article 10 of the Alaska Constitution to provide for maximum local self-government.

The Borough recognizes the need for economic development. We are as dependent as the state on North Slope oil and gas development to generate revenues necessary to provide essential services for our residents. The ACMP has provided the Borough with a singular formal status, a "seat at the table" where we would not have had one otherwise, during federal and state decision making for certain projects that could affect critically important coastal resources and uses. Assuring the protection of subsistence resources and uses has been the primary goal of our participation in the ACMP. The proposed statutory and regulation changes, however, will remove our ability to participate effectively in future ACMP consistency reviews. The State has asked us to be a visible partner in seeking expanded North Slope oil and gas leasing, exploration, and development. Now though, the Administration is telling us with these ACMP changes, that we cannot be trusted to meaningfully participate in the management of that development when it is our communities that will feel its impacts.

PROCESS ISSUES

We have a number of concerns about the process that has produced this proposed amendment. First, Section 306(d) of the federal Coastal Zone Management Act requires that states develop a coastal management program with the opportunity for full participation by individuals and organizations, including local governments. The changes to the program, especially the regulation changes, did not provide adequate opportunities for meaningful participation by the general public or by the coastal districts. Although the DNR established a work group during development of the initial regulation changes, this work group never had any meaningful discussions about the content of the regulatory changes. Many of the meetings were either cancelled or involved brief updates by DNR about the status of the regulations. An additional process issue resulted from a lack of adequate explanation of DNR's interpretation of regulations before or during the three revisions. In short, with respect to significant issues, neither the districts nor the public were given clear explanations of the meaning and impacts of the changing regulations.

Another concern relates to the timing of the May 20, 2005 required public hearing. The hearing preceded the June 2 submittal of a complete amendment request to OCRM. New regulations were out for review at the time of the hearing. The coastal districts and the public did not have complete information on which to base their testimony and written comments.

As I mentioned in a letter to Governor Murkowski before the hearing, limiting testimony only to communities with legislative information offices (LIOs) placed rural coastal residents at a significant disadvantage, and effectively froze many of them out of the review process. We believe that environmental justice issues are raised by this exclusion of largely Native and rural coastal residents from the single required hearing that was conducted by the state. The cultural traditions of Native Alaskans favor oral testimony rather than submission of written comments. The choice to limit testimony to the more populated communities discriminated against rural Alaskans who might have testified if the hearing was open to all coastal Alaskans. In addition, limiting the hearing to LIOs prevented great numbers of coastal residents and community and tribal officials in communities without those facilities from listening in on these important proceedings. Many would certainly have liked to use the opportunity to educate themselves and consider other testimony in considering whether to submit written comments.

The continually changing policy direction by DNR regarding what district enforceable policies will ultimately be acceptable has been confusing, difficult to track, and continues to this day. For example, during testimony on HB 191 in 2003, the DNR provided the Legislature with a number of policies that would be acceptable. These policies were posted, but then removed from the ACMP website without explanation. Despite repeated district requests that the agency do so, DNR has never explained whether these policies are still approvable, or if not, why not. Another example relates to a May 3, 2004 response to comments on the initial ACMP regulation changes. In that letter, DNR stated that it was not appropriate for the state to establish a statewide subsistence priority, but that "[d]istricts have the right and responsibility to establish enforceable policies, including designation of a subsistence priority, as long as that policy is a 'matter of local concern' . . ." In its recent comments on the public review draft of the Borough's coastal management plan, however, DNR has rejected each of our proposed subsistence policies, including a policy that established a priority for subsistence uses. This continually changing policy guidance raises significant process issues.

EFFECTS TO SUBSISTENCE

The residents of the North Slope Borough have always been closely tied to the land and water. As we have for millennia, the Inupiat today depend on fish, wildlife and plants to provide food for our tables as well as spiritual sustenance. The ACMP has been an important management tool for the Borough in ensuring that there is a proper balance between resource development and protection of subsistence resources and uses. We have never used our local plan as an impediment to responsible development, and have no intention or incentive to do so. DNR's interpretation of the new ACMP regulations, however, appears to block coastal districts from developing meaningful policies for subsistence uses and resources. Removing that local voice on an issue so central to the welfare of North Slope residents threatens to radically disrupt the delicate balance that allows us both economic and cultural prosperity. According to DNR's comments on our draft plan revision, districts may only establish policies for subsistence that "allow or disallow" a use, and those policies may not address subsistence access, level of need,

or a subsistence use priority. This interpretation is not consistent with testimony given by DNR to the Legislature, with the May 3, 2004 DNR response to comments on the initial regulation changes, or with HB 191 itself.

The North Slope Borough is extremely concerned about effects to subsistence from changes to the statewide Subsistence standard. The standard has been rewritten to only apply to areas designated as important for subsistence use. DNR claims that district policies cannot establish policies because the standard uses the terms "avoid or minimize." The net result of the weakened standard and new restrictions to enforceable policies will significantly affect subsistence and subsistence resources. We find the description of the Subsistence standard in the June 2 description of the ACMP offensive. This description says that the Subsistence standard does not include a provision for mitigation because a project would never be allowed if it would have effects that would need to be mitigated. This assertion is disingenuous because clearly development projects will have impacts to subsistence that merit mitigation.

We believe that DNR has crafted regulations that go beyond the legislative intent and mandate of HB 191, as evidenced by the final version and the many changes made to the bill as it worked its way through legislative committees. We believe that DNR has since been misinterpreting the regulations in finding that the statewide standard adequately addresses subsistence use protection and that matters, such as access, level of need, and subsistence use priorities do not "flow from" the statewide standard. The statewide standard is very general, and it does not appear difficult to demonstrate that it fails to adequately and comprehensively address subsistence uses and resources. Without the ability to establish locally crafted and implemented district policies, subsistence uses and resources will undoubtedly suffer significant adverse effects from future development beyond those permitted in the past. The history of our implementation of the North Slope Borough Coastal Management Plan, and that of other districts implementing their local plans, has amply demonstrated that in the vast majority of cases, local involvement has enhanced final project design and operation, reduced environmental impacts, and fostered, rather than impeded, responsible development.

The EIS must also consider the potential effect of the amendment on bowhead whale management and the subsistence harvest of the animal. Any perceived threat to the bowhead whale associated with the potential for increased industrialization of the species' habitat may elicit action by the International Whaling Commission (IWC). The IWC has no authority to restrict industrial operations, and could see a reduction in the subsistence quota as the only means of providing enhanced protection to a whale population at increasing risk. Finally, the new identification of a significant spill risk may itself have effects. The loss of the bowhead whale subsistence harvest and associated activities for even a short time would severely impact the cultural, spiritual, social, nutritional, and economic well-being of the Inupiat and Yupik Eskimo people residing in the coastal Beaufort, Chukchi, and Bering Sea communities of Alaska.

MEANINGFUL DISTRICT POLICIES

Comments by DNR on the Borough public review draft of our revised coastal management plan reveal the agency's extreme and restrictive interpretation of HB 191 and the revised ACMP regulations. The interpretation of the regulations introduces new concepts that when combined with HB 191 will eliminate the possibility for districts to establish any meaningful enforceable policies.

To craft a local policy, HB 191 requires only that districts demonstrate that state or federal law does not adequately address a matter of local concern. DNR has interpreted its regulations to mean further that local enforceable policies must "flow from" a statewide standard, or in other words, a policy may only address specific issues that are included in a statewide standard. By doing so, however, a district policy would have to address a matter already included in the statewide standard, which apparently is something prohibited by the statute. These two requirements together appear to all but eliminate the ability of a district to establish policies.

The "flow from" concept has additional problems. According to DNR, a district must limit its habitat policies to areas designated as important habitat, and the policies may only address the management goals listed in the statewide habitats policy for each type of habitat. Since most of the management goals only address nonliving subjects, a district would not be able to establish a policy for the fish and wildlife that use the habitat. For example, the statewide standard only lists nutrients and water flow as a management goal for wetlands, and therefore a district could not develop a policy for waterfowl or fish that use the wetlands.

Another interpretation of the regulations by DNR would severely limit a district from establishing an enforceable policy for any statewide standard that uses the words "avoid or minimize" impacts. According to DNR, a district could only "allow or disallow" a use for standards that use the term "avoid or minimize" including the subsistence, utility routes and facilities, transportation routes and facilities, and habitats standards.

The removal of matters regulated by the Alaska Department of Environmental Conservation (DEC) from ACMP consistency reviews further limits the ability of coastal districts to address impacts to coastal uses and resources. Air and water quality is directly related to habitats and subsistence resources and uses. Under the new statute and regulations as interpreted by DNR, it will be impossible for a district to develop policies to protect coastal resources and uses from an oil spill. This is an especially important consideration for the North Slope Borough. It has to varying degrees been acknowledged by the state and federal governments, and by the oil industry itself, that the capability to effectively respond to a significant oil spill under the broken ice conditions that occur for prolonged periods in arctic waters is minimal at best. To not allow us to craft local policies dealing with the potential for oil spills in arctic waters, and particularly in federal waters arguably beyond the reach of our municipal planning and zoning authority, is a challenge to our right and ability to manage activities that most directly threaten our subsistence whaling culture.

During testimony on HB 191 and in response to direct questions on the subject, DNR repeatedly assured the state Legislature, districts, and the public that districts would have ample opportunities to develop enforceable policies. With the revised regulations and each subsequent interpretation of them, however, DNR has laid down additional restrictions on the ability of districts to craft enforceable policies. The effect is to remove the ability of coastal districts, and the more than 200 communities and two-thirds of state residents they represent, to participate meaningfully in ACMP consistency reviews. Past experience has demonstrated that the state only provides due deference to districts in ACMP reviews when a local policy clearly justifies the imposition of a mitigation measure. Without policies, there will be no incentive for the state or federal agencies to involve coastal districts in the consistency review process in a meaningful way.

The ultimate result of limiting district policies will be increased impacts to coastal resources and uses. Alaska has not established the level of protection afforded by broad and long-established environmental laws in other coastal states. The state has not had to develop similar environmental laws, in part, because the ACMP has served to provide a balance between development and protection of resources and uses. The new ACMP will no longer provide adequate protection of coastal resources and uses. For each change to the ACMP that reduces protections for coastal resources, the EIS should include a discussion of how other laws will make up for this loss.

OTHER WEAKENED STANDARDS AND LAWS

In addition to reduced opportunities to establish district enforceable policies, the changes to the ACMP include other provisions that will result in added impacts to coastal uses and resources. Changes to the ACMP regulations weaken provisions in many of the former statewide standards, including the subsistence standard and the habitats standard. The proposed subsistence standard removes priority language that required state agencies and districts to assure opportunities for subsistence.

Changes to the Habitats standard are equally troubling. Since the mid-1980s, the Habitats standard has brought applicants, state and federal agencies, and coastal districts together to develop mitigation measures to reduce impacts. Several changes to this standard will have serious ramifications. First, the new standard has removed most references to biological resources, and DNR has said that only matters specifically spelled out in the standard may be considered. In other words, for most types of habitats, only non-biological matters may be considered. This makes no sense. Second, districts may only establish enforceable policies for areas designated as important habitat. The regulations impose strict parameters for establishment of these areas, and there must be a direct connection between effects of activities on saltwater areas. As a result, upland habitats in the coastal zone will no longer receive adequate protection. Third, the new standard removes the three-part sequencing process for approving projects that do not maintain or enhance habitats. The ability of the state to

address habitat issues through other agencies should be evaluated in the EIS, especially in light of the fact that the Office of Habitat Management and Permitting has only limited authority provided by two very narrow statutes.

Each of the changes to the other statewide standards should be carefully evaluated to determine the effects to coastal uses and resources. For example, the statewide Mining standard has been eliminated, and changes have been made to the transportation and utilities standards. The statewide minerals standard has been replaced by a standard that only applies to sand and gravel extraction from saltwater. In addition, the effect of the "avoid, minimize and mitigate" sequencing process in 11 AAC 112.900 should be carefully analyzed in the EIS to determine if it would adequately protect coastal resources and uses. From what can be inferred from the description in the June 2nd description of the ACMP, the sequencing process would not be effective because mitigation would seldom, if ever, be required.

The removal of matters regulated by the Department of Environmental Conservation from the consistency review process can be expected to have detrimental effects to the resources and uses of Alaska's coastal zone. While in theory air and water quality issues can be separated from other coastal management issues, in reality they cannot be effectively separated. Air and water quality is inextricably connected to subsistence, fish and wildlife and their habitats and every use or resource of the coastal zone. As Inupiat people, we recognize these connections, and are puzzled by the attempt to categorize and separate air and water quality impacts from other development impacts.

Projects with both a federal permit and a DEC 401 certification present special problems. It is not clear in recent project descriptions just what the scope of review is for the consistency review for such projects. Without a clear understanding of which activities are being reviewed, the consistency review loses its effectiveness.

The current interpretation by the state of the statutory changes to the ACMP would remove all air and water quality issues from the consistency review process. This interpretation will result in adverse effects to the environment, because there are many air and water quality matters not regulated by DEC, including activities in the Outer Continental Shelf discussed next.

The EIS should analyze a variety of projects recently reviewed by DNR to determine what aspects of air or water quality are no longer being addressed, especially in respect to the elimination of district enforceable policies for these matters.

Two other changes to the ACMP will result in additional coastal impacts. First, HB 69, passed in 2003, removes coal bed methane projects from ACMP reviews without a discussion of the potentially significant environmental effects of these activities. Experience in other states has demonstrated that significant coastal effects can occur from coal bed methane projects. Second, AS 46.40.096 directs DNR to expand the list of categorically consistent and generally consistent activities (the A and B lists) to "be as broad as possible so as to minimize the number of projects that must undergo a

consistency review . . .” This provision does not mention project effects or that such lists should be limited to routine projects.

OCS REVIEWS

The ability to influence federal Outer Continental Shelf (OCS) activities is of great concern to the North Slope Borough. In fact, a major reason for development of the ACMP was to provide the state and coastal districts an avenue to influence projects on the OCS. There is great uncertainty concerning how reviews of projects in federal waters will be conducted under the proposed changes to the ACMP. The ability of local districts to participate in discussions about consistency for activities that could affect air and water quality is unclear. An offshore oil spill is the single most feared industrial threat to our Inupiat way of life, and changes to the ACMP will strip away our most important mechanism for working with project applicants in addressing potential impacts to offshore subsistence resources and uses. The strongly consultative system was working, but is now being dismantled.

As a result of DNR’s interpretation of the DEC carve out, there would be no opportunity for districts to develop enforceable policies for these matters even though DEC does not have any permitting authority for federal waters. There also appears to be no provision in the consistency review regulations for districts to comment on DEC’s consistency finding that is submitted to the DNR for OCS issues.

The EIS should include a complete analysis of how state OCS reviews would occur and what environmental effects might occur without district policies and district participation in the process. Although DNR has been asked repeatedly to explain how OCS reviews would occur, it has not yet done so. A real-life, rather than a theoretical, project should be selected to determine how a review would be conducted.

CONCENTRATION OF DECISION MAKING AUTHORITY

The purpose of the ACMP is to ensure “the orderly, balanced utilization and protection of the resources of the coastal area” (AS 46.40.020). The concentration of decision-making authority in DNR, however, has removed a number of mechanisms that helped ensure that this balance was achieved. Changes to the program have eliminated important “checks and balances” that were part of the former ACMP.

Elimination of the Coastal Policy Council (CPC) removes the diversity of agency and district influence from coastal decisions. With the abolition of the CPC, the diverse mandates of the state agencies and coastal districts have been replaced with the ability for a single commissioner to make unilateral decisions. In addition, DNR’s June 2 description of the ACMP states that districts will no longer have seats on the ACMP Working Group, a body until now composed of district and state agency staff.

Project appeals, called elevations, are now decided by the DNR commissioner rather than jointly by the three resource agency commissioners. This change in conjunction with the prohibition of lawsuits for ACMP consistency determinations concentrates decision-making power in a single commissioner.

A reorganization of state agencies provides a further concentration of coastal decision-making power in one agency. The elimination of the Division of Governmental Coordination (DGC) and transfer of the ACMP to DNR eliminates the impartiality afforded when the program was within the Governor's Office. In addition, the transfer of the former Division of Habitat into DNR eliminates the diversity of opinion that was present when this division was part of the Alaska Department of Fish and Game.

CUMULATIVE EFFECTS

The North Slope Borough has considerable concerns about how the cumulative impacts of projects will be managed under the proposed changes to the ACMP. The concerns include the cumulative impacts of multiple projects as well as the cumulative impacts of all of the changes to the ACMP. The conclusions and recommendations of the 2003 National Research Council report on the Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope should be addressed in the EIS in light of the changes to the ACMP. It is especially important that the EIS address the significant new restrictions on the crafting of district enforceable policies and greatly diminished local role in the program as an addition to the sociocultural impacts that have already occurred within our population. An increasing sense of powerlessness to influence the management of the ever-increasing industrialization of the Inupiat homeland brings with it a variety of social stresses and ills that must not be ignored.

TRIBAL CONSULTATION

During development of the EIS, there should be a strong emphasis on involving tribal governments in the process. This involvement is required in both the EIS regulations and two executive orders. The inability of districts to develop meaningful enforceable policies and other changes to the ACMP will inevitably result in disproportionate impacts to Native people. The analysis of impacts to Native people should include a comparison of project effects in areas with local government and in areas outside of organized municipalities (i.e., coastal resource service areas). To date, there is no indication that OCRM has even considered a strategy for environmental justice or government-to-government consultation.

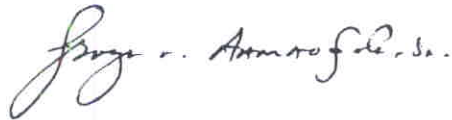
CONCLUSION

All of the changes to the ACMP consistency review process should be evaluated in the EIS to determine possible coastal effects of the changes. Far from being the routine

program change that was sold to the Alaska Legislature to start this amendment process, what the state is now proposing is a major program overhaul clearly intended to produce more and faster development within our state's coastal zone. As difficult a prospect as it may be, OCRM must try to identify the nature and scope of impacts that will result from the amendment. We encourage you to take the time necessary to do justice to this task and to the people and resources of Alaska's rich, expansive, and diverse coastal zone.

Thank you for considering these comments.

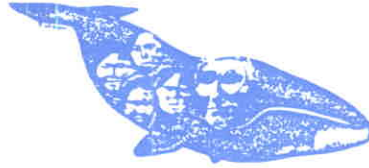
Sincerely,



George N. Ahmaogak, Sr.
Mayor

cc

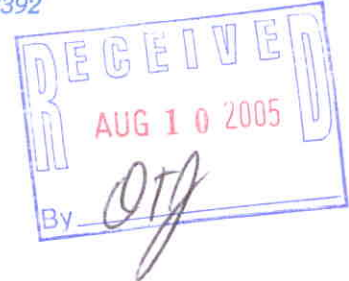
Bill Millhouser, OCRM
Tom Irwin, Commissioner, Alaska Department of Natural Resources
Bill Jeffress, Director, Office of Project Management & Permitting, DNR
Senator Lisa Murkowski
Senator Ted Stevens
Congressman Don Young
Rex Okakok, Director, NSB Planning
Charlie Brower, Director, NSB Department of Wildlife
Robin Koutchak, Assistant NSB Attorney
Dennis Roper, NSB Mayor's Office



Alaska Eskimo Whaling Commission

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August 3, 2005

John R. King
Responsible Program Officer
Coastal Programs Division
Office of Ocean and Coastal Resource Management
SSMC4 Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

John.King@noaa.gov

Re: Comments On Suggested Alternatives and Potential Impacts of Federal
Approval of the Amended Alaska Coastal Management Program

Dear Mr. King:

The Alaska Eskimo Whaling Commission appreciates the opportunity to submit the enclosed comments on alternatives and potential impacts of the amended Alaska Coastal Management Program.

In addition to these comments, the AEWC supports the comments submitted to you by the North Slope Borough.

If you have any questions, please do not hesitate to call me.

Sincerely,


Maggie Ahmaogak
Executive Director

cc: AEWC Commissioners

MAYOR GEORGE N. AHMAOGAK, SR., NORTH SLOPE BOROUGH

**COMMENTS OF THE ALASKA ESKIMO WHALING COMMISSION
TO THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
ON ALASKA'S AMENDED COASTAL ZONE MANAGEMENT PROGRAM**

August 3, 2005

INTRODUCTION

The Alaska Eskimo Whaling Commission (AEWC), a not-for-profit corporation organized under the laws of the State of Alaska, represents the ten bowhead whale subsistence hunting villages of Barrow, Nuiqsut, Kaktovik, Pt. Hope, Wainwright, Kivalina, Wales, Savoonga, Gambell, and Little Diomede.

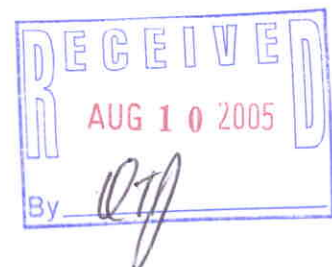
The AEWC and the North Slope Borough (Borough or NSB) have worked for more than thirty years to promote the co-existence of oil and gas development with our people's subsistence way of life. This approach not only is compatible with the Coastal Zone Management Act, it echoes the foundational principles of that Act: to preserve, protect, and develop the resources of the coastal zone. CZMA §303.

In enacting its amended ACMP, the state of Alaska seeks to dismantle the highly successful regulatory format that has evolved on the North Slope. In implementing the new ACMP, Alaska employs a process whereby it appears on paper to protect our subsistence resources and way of life, while in fact abolishing virtually all protections for our subsistence community, our resources, and their habitat.

Therefore, the Secretary should reject the amended ACMP, at least as it applies to the North Slope Borough. He should advise the State that its program does not advance the national goals of the federal CZMA unless the State authorizes the Borough to write enforceable policies that accomplish the balance between development and protection of coastal resources, including subsistence and habitat.

COMMENTS

- I. **SCOPING UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT IS PREMATURE BECAUSE THE REVISED ACMP DOES NOT MEET THE REQUIREMENTS OF THE COASTAL ZONE MANAGEMENT ACT § 306(d).**
 - A. **Contrary to Congressional Requirements in the CZMA, Alaska Has Failed to Coordinate its Program with Coastal District Management Plans in Place on January 1, 2005. CZMA § 306(d).**



In the CZMA, Congress requires that states coordinate their programs with local plans in place on January 1 of the year in which the state's program is submitted to the Office of Ocean and Coastal Resource Management (OCRM). CZMA §306(d)(A). Alaska has not done this. Instead, the State arranged for the existing North Slope Borough and other district plans to terminate, on July 1, 2006, and then instructed the Borough and other coastal districts to develop new plans, the devised and predetermined ineffectiveness of which is discussed below. Thus, from the perspective of CZMA §306(d), Alaska in fact has done the opposite of what Congress required – the coordination of State revisions with local plans already in existence at the time of submission to OCRM. Rather, Alaska has terminated existing local plans.

In its Program Description for the Alaska Coastal Management Program, submitted on June 2, 2005 (hereafter, Program Description), the Alaska Department of Natural Resources (DNR) states that its “networked consultation process with existing plans was in place on January 1.” Program Description, p. 33. Congress, however, does not require Alaska to have a “consultation process” in place on January 1. Congress requires that the Secretary, before approving the ACMP, find that Alaska has coordinated the plan with the existing North Slope Borough and other coastal district plans. In this case, the Secretary cannot make such a finding because this is not what Alaska has done.

Alaska, in its failure to coordinate with the Borough's plan, denies itself the benefit of the experience represented by the Borough's successful history of facilitating development while protecting subsistence resources. For almost twenty years, the Borough has used its coastal zone authority to help bring the climate surrounding oil and gas development on the North Slope from one of conflict and litigation to one of cooperation and mutual respect. If Alaska had taken the time to coordinate its plans to revise the ACMP with the Borough's existing plan, the state might have recognized the strength of the Borough's regulatory scheme.

B. Alaska Has Failed to Establish an Effective Mechanism for Continuing Consultation and Coordination Between the DNR and the North Slope Borough. CZMA §306(d)(3)(B).

Instead of establishing an effective mechanism for consultation and coordination with the Borough and other coastal districts, Alaska in the new ACMP sharply diminishes the role of coastal districts. Under the former ACMP, the coastal districts, as voting members of the Coastal Policy Council, worked directly the State to manage coastal development. In addition, coastal districts had seats on the ACMP Working Group. Under the new ACMP, coastal districts have no meaningful role in Alaska's coastal management process.

The DNR created four mechanisms for continuing consultation and coordination with coastal districts and other state agencies. These include DNR's unilateral policy-level decision-making authority, the State's unilateral authority to implement district plans, maintenance of the ACMP website, and finally, the ACMP Working Group. Program Description, p. 30.

The first two mechanisms involve unilateral state action. The maintenance of a website does not belong on the list because it does not involve any consultation or coordination with districts. Therefore, of these four mechanisms, only one—the ACMP Working Group—would appear to involve consultation or coordination with coastal districts. Even here, however, the mechanism for consultation and coordination remains unclear. The DNR offers only a vague description of their role: districts “participate voluntarily” and are permitted to address issues “that affect local implementation.” Program Description, p. 32.

Thus, Alaska at this time has no well defined and effective mechanism for continuing consultation and coordination with the North Slope Borough and other districts, as required by CZMA §306(d).

II. IF THE SECRETARY APPROVES THE NEW ACMP, HE THEN MUST DISALLOW ONGOING CZMA FUNDING FOR ALASKA IN LIGHT OF THE STATE'S FAILURE TO ADHERE TO THE STATUTORY AND REGULATORY PROVISIONS OF ITS NEW COASTAL MANAGEMENT PLAN.

The Secretary's responsibility under the CZMA is two-fold. First, the Secretary must determine whether the ACMP is consistent with Congressional requirements and policy as stated in the CZMA §302, §303, & §307. Second, if the Secretary approves the ACMP, he must make an ongoing determination that in implementing its plan, Alaska remains in compliance with the approved plan, including the CZMA's Congressional directives. CZMA §312.

A. Contrary to its New Coastal Management Plan, Alaska Arbitrarily Has Prohibited the North Slope Borough from Establishing a Subsistence Priority to Protect Our Traditional Subsistence Community During this Period of Intense Oil and Gas Development.

As both state and federal regulators are aware, establishing a subsistence priority to protect our subsistence uses during this period of intense oil and gas development is critically important to the survival of our community. Accordingly, as discussed below, the ACMP, accompanying regulations, and DNR's clearly stated position on subsistence priority would appear to set the stage for the Borough to establish an enforceable policy regarding subsistence priority on the North Slope.

Contrary to the appearance given by the new ACMP, however, Alaska has rejected virtually every attempt by the Borough to protect subsistence uses in our coastal zone.

To see how Alaska is accomplishing this end, one first must understand the State's limits on district actions and how these seemingly reasonable limits become triggers for arbitrarily denying virtually all local policies. In the ACMP, Alaska limits district enforceable policies to "uses, activities, and impacts" identified in statewide standards. 11 AAC 112. Thus, in the language of DNR, district enforceable policies must "flow from" a statewide standard. Program Description, p. 74 However, issues that are the subject of Borough policies cannot be "adequately addressed" in the statewide standard. This is because Alaska additionally limits district enforceable policies to matters not adequately addressed by state or federal law.¹

In its Program Description, DNR offers two scenarios in which a district may write an enforceable policy under the "not adequately addressed" standard: The first scenario is one in which a regulatory agency has not acted to address the matter. The second scenario is one in which the district finds that a statute or regulation is not sufficiently specific to address the matter. "In this case," writes DNR, "a coastal district...could write an enforceable policy that is more specific." Program Description, p. 78.

It thus appears that Alaska anticipates districts writing enforceable policies in circumstances where: (1) the issue addressed in the policy is identified in or "flows from" a statewide standard, and (2) the issue is a matter of local concern that is "not adequately addressed" in state or federal law or regulations.

1. In the new ACMP Alaska appears to give the Borough authority to protect our subsistence way of life through the creation of a subsistence priority.

Subsistence is among Alaska's enumerated statewide standards. Therefore, it would appear that a Borough enforceable policy on subsistence priority would be permissible as "flowing from" this statewide standard. Furthermore, while Alaska law, by including it in a state-wide standard, identifies subsistence as important to the State, neither state nor federal law specifies the relative importance of subsistence when compared with other activities. Thus a Borough policy on subsistence priority also would appear to meet the requirement that the Borough policy not be "adequately

¹ 11 AAC 114.260(d). A "matter of local concern" is one that, among other things, is "not adequately addressed by state or federal law." AS 46.40.070(a)(2)(C)(ii).

addressed" in state or federal law or regulations.²

2. In formal policy statements, DNR unequivocally has delegated the responsibility for establishing subsistence priorities to the Borough and other districts.

According to DNR, the State cannot establish a subsistence priority because to do so "would not pay proper deference to the persons 'most familiar with local conditions and who have the traditional political right and responsibility to govern general land use.'" Program Description, p. 224. According to DNR, "the designation [of a subsistence priority] should be in the hands of the districts...districts have the right and responsibility to establish enforceable policies, including the designation of a subsistence priority, so long as that policy is a 'matter of local concern'..." Program Description, p. 224. Furthermore,

"while a statewide subsistence priority is not appropriate, a district subsistence priority in a designated area important for subsistence use is appropriate and encouraged. This is the entire reason for the lengthy requirements at 11 AAC 114.230...11 AAC 114.240...and 11 AAC 114.250 ...to require districts to comprehensively inventory, analyze, and designate the local uses and resources that require extra protection in the ACMP consistency review process." Program Description pp. 84-85.

3. Inexplicably, however, DNR has rejected the Borough's policy on Subsistence Priority in contradiction of the plain language of the ACMP and its regulations, as well as the agency's own stated policy.

Given the critical importance of subsistence to our community, a subsistence priority was the very first enforceable policy set forth in the Borough's new district plan, submitted to DNR for review on April 20, 2005. Despite its statute, regulations, and formal policy statements, DNR rejected the Borough's subsistence priority policy on the grounds that

²11 AAC 112.270. Subsistence. (a) a project within a subsistence use area...must avoid or minimize impacts to subsistence uses of coastal resources. (b) For a project within a subsistence use area...the applicant shall submit an analysis... of reasonably foreseeable adverse impacts of the project on subsistence use...(c) Repealed. (d) The department may...after consultation with the appropriate district...designate areas in which a subsistence use is an important use of coastal resources as demonstrated by local usage.

11 AAC 114.250(g). [Subsistence Use Designations.] For an area designated by a district under 11 AAC 114.250(b)-(i), ... a district may adopt enforceable policies that will be used to determine whether a specific land or water use or activity will be allowed...

the state Subsistence standard...already provides subsistence use prioritization and protection, disallowing a policy declaring a subsistence use priority. The rationale...that existing State and federal laws are "inadequate" impermissibly sidesteps the regulatory prohibition against a policy written on a matter already addressed by state law. North Slope Borough Coastal Management Plan (NSBCMP): Policy Analysis Table, p. 3.

Thus, Alaska will not—and now the Borough cannot—give priority to the protection of our subsistence way of life.

B. Contrary to the New ACMP, Alaska Arbitrarily Prohibits the North Slope Borough from Protecting Our Community's Access to Our Subsistence Resources.

1. Alaska's new statute and regulations appear to give the Borough authority to establish an enforceable policy governing subsistence access.

As described above, under the ACMP and its regulations, Borough enforceable policies may be written only to matters that are identified in a statewide standard, but that are not "adequately addressed" in that standard or in other state or federal law. As with the previous example, Alaska has identified subsistence in its enumerated statewide standards, but has not specified the conditions under which the need for access to subsistence resources is to be met. Subsistence access also is not addressed in federal law. Therefore, a Borough enforceable policy on subsistence access would appear to be permissible as "flowing from" a statewide standard and not being "not adequately addressed" in state or federal law.

2. Again, DNR's rejection of the Borough's policy on subsistence access contradicts Alaska's representations made through its new statute and regulations, and further contradicts DNR's own statements on permissible district policies.

In rejecting the Borough's enforceable policy on Subsistence Priority, as noted above, Alaska informed the Borough that it the Borough could not establish an enforceable policy on this issue because (in direct contradiction of other statements by the State), DNR concluded, the issue of Priority is specifically addressed in the State's standard on Subsistence. However, on Turning to the matter of Subsistence Access, Alaska holds that the Borough may not enact an enforceable policy protecting subsistence access because the issue is not specifically addressed in a statewide standard.

Whatever the words of the ACMP and whatever the regulations and official statements made by the State with respect to the ACMP, Alaska's actions demonstrate its true intent—to deny the Borough the opportunity, guaranteed by Congress in the CZMA, to participate in the protection of our coastal zone. CZMA §302(i) & §303(2)(i). As the two preceding examples illustrate, Alaska's actions not only belie its official words, the State does not even seek to be internally consistent in its denial of Borough policies.

C. In Its Rejection of Approximately 41 Out of 44 Enforceable Policies in the Borough's New Coastal Management Plan, Alaska Employs Rationales That Are Arbitrary, Internally Inconsistent, and Self-Contradictory.

The following examples illustrate the arbitrary and capricious nature of DNR's rejection of Borough policies.

- Alaska rejects the Borough's policy protecting our "level of [subsistence] need." Unlike commercial uses, which are profit driven, subsistence take is a self-limiting activity undertaken only to the level of a community's "subsistence need". "Level of [subsistence] need" is a term widely used in both federal and international law in reaching agreement on parameters for subsistence take.

Alaska has rejected the Borough's policy protecting our subsistence harvest at our "level of [subsistence] need" on the grounds that, according to the State, this matter already is covered in the statewide standard on Subsistence. Contrary to other rejection statements, DNR's grounds for rejecting this policy is that it does not "flow from" a statewide standard. Policy A-4: Project Disturbance to Subsistence. NSBCMP: Policy Analysis Table, p. 4.

In other rejection statements, however, DNR uses the "does not flow from" trigger to reject policies that it claims are not identified in a statewide standard rather than policies that are identified in a statewide standard. Policy C-5: Erosion; and Policy C-2: Specific Habitat Protection. For the latter, DNR elsewhere has used the "adequately addressed" rejection trigger. Policy A-1: Subsistence Use Priority, Policy A-3: Appropriate Safeguards to Protect Subsistence.

- Alaska disallows Borough policy on the mitigation of adverse industrial impacts to our subsistence hunt. In its attempt to formulate an acceptable policy to protect our bowhead whale subsistence hunt from adverse industrial impacts, the Borough employed the long-standing "no unmitigable adverse impact" standard. Senator Stevens originally coined this standard in the 1986 amendments to the

Marine Mammal Protection Act, and federal, state, and local agencies have used the phrase widely ever since, as the umbrella under which the community and developers negotiate "mitigation" measures that facilitate oil and gas operations while protecting subsistence uses.

Despite the successful use of the "no unmitigable adverse impact" standard in Alaska for almost 20 years, the State now finds its inclusion in the Borough's policy to be "impermissible", on the grounds that the Borough may not amend the statewide Subsistence standard by adding the term "mitigation" to it. NSBCMP: Policy Analysis Table, p. 5, Policy A-6: Subsistence Whaling. In the following example, the State rejects a proposed Borough policy on the grounds that, according to DNR, the statewide Subsistence standard already contains the word "mitigation", even though it actually does not.

- Alaska contradicts itself in prohibiting the Borough from protecting bowhead whale habitat. In its enforceable policy providing specific protections for bowhead whale habitat, the Borough notes that the policy applies to "offshore areas designated for important habitat and for subsistence." The Borough's rationale in enacting the policy is that it is seeking to provide specificity beyond that provided in state and federal laws. NSB Policy C-1: Bowhead Whale Habitat.

Since the ACMP includes statewide standards on Habitat and Subsistence, this policy would appear to be permissible under the "flow from", but "not adequately addressed" triggers. DNR rejects this standard, however, stating that "impacts to habitats and subsistence uses are matters adequately addressed though [sic] the mitigation sequence under the state standards for...Habitats and...Subsistence. NSBCMP: Policy Analysis Table, p. 8; Policy C-1: Bowhead Whale Habitat.

As noted above, DNR's denial here contradicts its statement of the rationale for denying the Borough's use of the "no unmitigable adverse impact" standard. In that denial, DNR tells the Borough that it cannot add "mitigate" to the statewide Subsistence standard. In this denial, DNR tells the Borough that the statewide Subsistence standard already includes the term "mitigate."

The State's rationale for the present denial also demonstrates a misunderstanding of its own statewide standard on Habitat. In the State's Habitat standard, the phrase, "to avoid, minimize or mitigate" applies to competing uses of a resource, not to competing uses of the resource's habitat. 11 AAC 112.300(b)(1). Conversely, the intent of the Borough policy is to address competing uses of habitat, a matter not adequately addressed in the statewide Habitat standard. The State denies the Borough policy nonetheless.

- The State prohibits the Borough from protecting habitat for specific coastal species. In its enforceable policy providing specific habitat protection, the Borough notes that the "statewide Habitats policy does not include management measures for coastal species for the habitats listed in this policy." NSB Policy C-2: Specific Habitat Protection.

Again, this policy would appear to be permissible as "flowing from" but not being "adequately addressed" by the statewide standard. However, it too is rejected on grounds that "the district cannot require consideration of additional factors in implementing the avoid, minimize, mitigate sequence." NSBCMP: Policy Analysis Table, p. 8; Policy C-2: Specific Habitat Protection. If the Borough is not allowed to require consideration of additional factors, how can it develop policies that are consistent with the "not adequately addressed" trigger?

The foregoing examples are but a few of Alaska's contradictory and confounding reactions to the Borough's proposed enforceable policies. As these examples illustrate, Alaska does not intend to empower the Borough and other districts, although the language of the ACMP indicates otherwise. In fact, putting aside the impenetrable vagaries of Alaska's new statute and regulations, as well as DNR's circular and self contradictory reasoning, the end result is that Alaska has devised a process whereby it can appear on paper to protect our subsistence resources and way of life, while in practice removing virtually all protections for our subsistence community, our resources, and their habitat.

Congress did not enact the CZMA with the intent of rewarding states whose coastal management programs are no more than an empty exercise. For this reason, Congress instructed the Secretary to withhold funding from states who seek to mislead the federal government, as well as their own citizens, by developing coastal management programs that adhere to the CZMA's mandates in appearance only. Under these circumstances, even if the Secretary approves the ACMP, he does not have the authority to continue federal CZMA funding for Alaska. 16 U.S.C. §1458(c).

III. THE DNR'S IMPLEMENTATION OF THE ACMP SEVERELY WEAKENS PROTECTIONS FOR SUBSISTENCE, HABITAT, AND THE SAFETY OF FUTURE PROJECTS.

A. The DNR's Arbitrary Implementation of the ACMP's Statewide Standards for Subsistence and Habitat Substantially Weaken Coastal Zone Protections on the North Slope and Set the Stage for Increased Conflict Between North Slope Residents and Developers.

According to Congress, state coastal management plans, among other

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things, must preserve, protect, restore or enhance coastal resources. CZMA §303. Alaska's new statewide standards for subsistence and habitat protection are written so generally, however, that they are ineffective in application. In implementing these standards and its regulations, DNR further undermines the ACMP's effectiveness by prohibiting districts from compensating for the lack of specificity. This new approach to coastal zone management not only undermines coastal protections in Alaska generally, on the North Slope, it eliminates the Borough's strongest regulatory tool: its ability to draw developers to the table for discussion and negotiation. By ignoring the Borough's history of minimizing conflict, Alaska further weakens coastal protection along the North Slope by increasing the risk that coastal management issues will be resolved not by the State, nor by the Borough, but by the courts.

1. Alaska no longer has clear standards for protecting subsistence.

Alaska's new statewide standard for subsistence provides that project activities in areas designated for subsistence use shall "avoid or minimize" impacts to subsistence, but does not provide a definition for "avoid or minimize." When the Borough attempted, in its proposed enforceable policies, to define the phrase, DNR rejected the Borough's definition, reasoning that the statewide standard already addressed subsistence prioritization and protection through application of the--still undefined-- "avoid or minimize" standard. The statewide standard is actually silent on subsistence prioritization, as noted above.

DNR also reasoned that the Borough impermissibly added a mitigation component to "avoid or minimize." In the Project Description, DNR says "avoid or minimize," while not defined, may not include the concept of mitigation because mitigation would *weaken* the subsistence standard. Program Description, p. 84.

The Borough's ability to use mitigation as a tool to permit otherwise inconsistent projects has been critical to striking a balance between development on the North Slope and protection of its subsistence resources and habitat. It is irresponsible for Alaska to decide unilaterally that mitigation weakens protections to subsistence. Alaska's having taken mitigation off the negotiating table closes off a major, historic regulatory avenue for the Borough.

2. Alaska prohibits the Borough from compensating for the State's inadequate standards to protect habitat for subsistence resources, including the bowhead whale.

One way the State prohibits the Borough from protecting habitat of subsistence resources is to exclude local knowledge and accept only written scientific evidence of the biological productivity of an area proposed to be designated as

important habitat under 11 AAC 114.270(g). Without local knowledge, habitat will be designated or denied designation based on incomplete data. Local knowledge often is a reliable source of information in location and protection of productive habitat. It should not be discounted entirely by the State, but should be considered a supplement to written scientific evidence.

Even if the district designates an important habitat area, the district is not permitted to write enforceable policies to manage that area except to allow or disallow a use or activity within the area. 11 AAC 114.270(g). This means that the Borough may not establish standards for projects with potential to adversely affect important habitat areas and subsistence resources using that habitat.

3. Alaska's statewide standards are overly general, but the State requires the Borough's enforceable policies to be impracticably specific.

Alaska has declined to produce standards that are specific and prescriptive enough to actually protect subsistence and habitat. However, the State denies districts the opportunity to supplement the statewide standards with more detailed district enforceable policies, other than to list activities that will be allowed or disallowed.

Although DNR declared that a district policy would be permissible if it made a general state law more specific, as illustrated above, DNR repeatedly denied the Borough's proposed policies on the grounds that the more specific aspect of the policy did not "flow from" a State standard, or that it impermissibly redefined a process or a term too specifically. See generally Policy A-4: Project Disturbance to Subsistence; Policy A-6: Subsistence Whaling; Policy C-1: Bowhead Whale Habitat; Policy C-2: Specific Habitat Protection ("district cannot require consideration of additional factors in implementing the avoid, minimize, mitigate sequence"); Policy C-5 Erosion; Policy C-6: Migration; Policy E-2: Seismic Surveys.

Rather than allow the Borough to establish specific standards for activities affecting the North Slope's subsistence resources and habitat, DNR defaulted to the districts' authority to list activities that would be allowed or disallowed in a particular designated area. This is unworkable because it requires the Borough to be capable of predicting every conceivable aspect of every future project, and whether that activity would have adverse impacts on subsistence resources.

The irony is that the State refuses to be specific in its enforceable policies, but prohibits the Borough from adding specificity to the standards by demanding an impracticable level of specificity in the form of activities the Borough will allow or disallow in a

designated area. DNR's intention is not to empower the districts, but to present a regulatory conundrum that in effect silences the Borough and its sister districts.

B. The "DEC Carve-out" Further Undermines Any Remaining Protections for Subsistence and Habitat on the North Slope.

Continuing in the spirit of restricting local district authority to the point of making it meaningless, DNR specifically has forbidden coastal districts from forming enforceable policies on all matters of air, land, and water quality. 11 AAC 112.310. This is known as the "Department of Environmental Quality or DEC Carve-out." The AEWC is incredulous that state regulators would shut coastal districts out of matters that are so integral to habitat and subsistence protection.

Notwithstanding the State's argument that districts can protect subsistence and habitat by designating important habitat and subsistence areas, DNR rejected every subsistence and habitat policy that the Borough proposed, many because the policies addressed matters regulated by the DEC. See Habitat policies: Policy C-5: Erosion (considerations of habitat and surface water quality); Policy C-12: Storage of Petroleum Products; Policy C-13: Siting of Solid Waste Disposal Facilities; Policy C-14: Air and Water Quality Monitoring. All of the foregoing pertained to habitat, but were disallowed because they overlap with matters under DEC's regulatory jurisdiction.

As is illustrated above, separating matters of air, land and water quality from matters of habitat effectively renders most district habitat policies null. This is not what Congress envisioned in the CZMA when it provided for local implementation of a coastal management program.

C. Borough Participation Has Never Been Obstructive to Coastal Zone Planning, but it Is Instrumental in Ensuring Safety and Environmental Integrity in Coastal Development Projects.

The Borough's and the AEWC's ability to participate in joint project review under the CZMA and former ACMP has never resulted in unnecessary delay of a project. What it has done, just as Congress intended, is enable us to discuss with state agencies and developers potential hazards that we can see because of our knowledge of the arctic environment.

In fact, only one project was ever disapproved under the former ACMP. In that case, an operator planned to drill from an ice island and to store oil in drums on the island if they found oil. The federal and state agencies saw no hazard in this plan and were prepared to approve it. However, in consistency review, the North Slope Borough and the AEWC were able to demonstrate to state officials the danger of this project, which

was to be located in the shear ice zone, where the circulating ice pack and the shore fast ice meet. Had the operator gone ahead with this project, it could have had serious environmental consequences and could well have endangered the lives of those who would have worked on the ice island.

A different operator later applied to drill at the same site using a bottom-founded drilling structure. The Borough and the AEWBC believed that this structure would be able to withstand the pressures of the shear ice zone, and we raised no consistency questions. This incident provides a perfect illustration of our community's approach to consistency review. For us, the purpose of consistency review is to ensure the safety and environmental integrity of a project.

Without the opportunity for local participation in the consistency review process, the state closes itself off from critical local knowledge, including this type of critical environmental and safety information. The State should avail itself of the coastal districts' local knowledge. In refusing to incorporate it into key matters of safety and environmental integrity, the State appears to have forgotten purpose of having local districts implement the ACMP.

CONCLUSION

AEWBC whaling captains and crew continue to observe compounding adverse effects of oil and gas development on bowhead whales in the Beaufort Sea. Planning that does not meaningfully include local regulation will jeopardize our bowhead hunt, around which our community has built and sustains its culture and identity.

The Alaska legislature and Department of Natural Resources have assembled a coastal management program that simultaneously relaxes protective standards for subsistence and habitats while preventing the North Slope Borough from making policies that compensate for the inadequacies of the new State standards. The amended ACMP so limits the ability of coastal districts to write enforceable policies that the Borough and the AEWBC effectively can no longer protect the subsistence hunt from coastal uses that, when carried out without definitive subsistence and habitat standards, are likely to have potentially serious adverse effects on the bowhead hunt.

The Secretary has a responsibility to approve a plan that strives to achieve the national goals in the CZMA preserve, protect, and develop the resources of the coastal zone. The revised ACMP, as applied to the Borough falls far short of those goals. Even worse, it prohibits the Borough from implementing policies to achieve them, and the subsistence residents of the North Slope and the coastal environment will bear the burden of the State's misguided approach.